

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:01cr184**

UNITED STATES OF AMERICA

Plaintiff,

v.

ICABOD JOSEPHUS ALLISON

Defendant.

ORDER

THE MATTER before the Court is whether the Defendant, Icabod Josephus Allison, is entitled to a sentence reduction by virtue of Amendment 706 (dealing with crack cocaine) of the Sentencing Guidelines. The applicable statute authorizes such reduction if the original sentence was “based on a sentencing range that has been subsequently lowered by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2).

The original guideline range for Mr. Allison, with a Total Offense Level of 23 and a Criminal History of Category VI, was 92 to 115 months, subject to a mandatory minimum sentence of 120 months. Prior to sentencing, this Court granted the government’s motion for downward departure under 18 U.S.C. 3553(e), departing from the mandatory minimum to the original guideline range of 92 to 115 months and imposing a 108 month sentence. Under the amended guidelines, Mr. Allison’s Total Offense Level would drop from a 23 to a 21. This reduced level would yield a guideline range of 77 to 96 months.

The government argues that Mr. Allison’s sentence was determined by a deviation from the mandatory minimum, not by the sentencing guidelines. However, the government’s motion for downward departure permitted this Court to impose a sentence below the mandatory

minimum. Therefore, the mandatory minimum no longer constituted the bottom of the guideline range and in determining the appropriate sentence reduction below the mandatory minimum, this Court took into account, among other factors, the actual guideline range which would have been applicable but for the mandatory minimum. Mr. Allison's actual sentence of 108 months, at least to some extent, was influenced by and "based [in part] on a sentencing range that has been subsequently lowered" within the meaning of 18 U.S.C. § 3582(c)(2).

Based on the amended guideline range, this Court impose an amended sentence that is in proportion to the current sentence. The Court hereby sentences Mr. Allison to **90 months**. Accordingly, Defendant's motion to reduce sentence is GRANTED.

IT IS SO ORDERED.

Signed: August 11, 2008

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

